

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

29397

FILE: B-214914**DATE:** September 24, 1984**MATTER OF:** R.K. Burner Sheet Metal, Inc.**DIGEST:**

1. Where protester would not be in line for award even if protest were sustained, it is not an interested party to protest the responsiveness of a lower bid.
2. Where agency determines that descriptive literature submitted with awardee's bid adequately demonstrates that its proposed equipment will meet the solicitation's specifications, protester's bare contrary allegations do not provide a basis for GAO to question the agency's judgment.

R.K. Burner Sheet Metal, Inc. protests the award of a contract to Raygal Design Associates under invitation for bids (IFB) No. M00681-84-B-0013 issued by the United States Marine Corps. Burner contends that the awardee's bid was nonresponsive. We dismiss the protest in part and deny it in part.

The solicitation sought bids on four lots to provide various commercial-type dishwashers and utensil washers to be installed at Camp Pendleton, California. The solicitation also required bidders to furnish descriptive literature as a part of their bids to establish the details of their proposed equipment "as to design, material, construction and assembly." The agency received six bids on each of the four Lots and found Raygal the low responsive bidder on Lot I (dishwashers) and Lot III (utensil washers). Thereafter, the agency awarded a contract to Raygal covering these two lots.

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Raygal's preprinted descriptive literature for the dishwashing machines it offered under Lot I included a typewritten annotation that the machines shown would be modified to conform to the applicable Federal Specification, as modified by the IFB's specifications. The protester argues that this submittal does not meet the "intent" of the descriptive literature clause in the IFB. The Marine Corps advises, and the protester does not dispute, that the only modification required was to mount the control panel on the top of the machine instead of on the side.

We note that of the six bids the agency received on Lot I, the protester's bid was fourth low. Although the agency rejected the apparent low bid as nonresponsive before making award to Raygal--the second low bidder--nothing in the record indicates that the third low bidder's bid was defective. Thus, even if the protester were correct in its contention, it would not be in line for award. Under these circumstances, Burner is not an interested party under our Bid Protest Procedures, 4 C.F.R. § 21.1(a) (1984), to protest the responsiveness of Raygal's bid. Logistical Support, Inc., B-208449.2, Sept. 14, 1983, 83-2 CPD ¶ 322. We point out, however, that where a bidder submits information with its bid that clarifies its pre-printed descriptive literature and obligates the bidder to perform the contract as required by the specifications, it would be improper to reject the bid as nonresponsive. Calma Company, B-209260.2, June 28, 1983, 83-2 CPD ¶ 31.

Burner also generally contends that the awardee's descriptive literature for the equipment to be provided under Lot III, which Burner is the next low bidder, shows that this equipment does not conform to the specifications. The protester, however, has not specified how or in what respect the awardee's literature showed noncompliance with the specifications, and the Marine Corps reports that the literature does show compliance. Under these circumstances, we have no basis to question the agency's judgment in this regard.

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The protest is dismissed in part and denied in part.

for *Milton J. Aocular*
Comptroller General
of the United States